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DENISE B. MOLINE, P.C.

6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, VA 22101

Direct Telephone: 703-893-7910

Of Counsel
PUTBRESE & HUNSAKER

Telephone: 703-790-8400
Telecopy: 703-827-9538

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 22, 1994

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of Lowrey Communications, L.P.
GC Docket No. 92-52
DBMPC #1596

Dear Mr. Caton:

On behalf of Lowrey Communications, Limited Partnership ("LCLP"), there is transmitted herewith an original plus nine (9) copies of LCLP's Comments in response to the Commission's Second Further Notice of Proposed Rule Making in the above-referenced proceeding.

Should there be any question regarding the attached Comments, please contact undersigned Counsel for LCLP.

Very truly yours,

Denise B. Moline

Denise B. Moline

DBM:wp
Attachment

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter of	)	**GC Docket No. 92-52**
	)	
Reexamination of the Policy	)	**RM-7739**
Statement on Comparative	)	**RM-7740**
Broadcast Hearings	)	**RM-7741**

To: The Commission

COMMENTS OF LOWREY COMMUNICATIONS, LIMITED PARTNERSHIP

Denise B. Moline, Esq.
Denise B. Moline, P.C.
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, VA 22101

703-893-7910

July 22, 1994

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SUMMARY

Lowrey Communications, Limited Partnership ("LCLP") submits its comments in this Rule Making proceeding, and requests that its comments be considered by the Commission.

LCLP submits that the Commission is precluded, by Supreme Court precedent and general equitable principles for retroactive application of newly developed rules under the APA, from applying any new rules or policies derived from this proceeding retroactively to change the results of decisions arrived at under the Commission's former criteria. Any new policies or rules for selection among comparative broadcast applicants may be applied only prospectively to new applicants, and to applicants who have not yet undergone the hearing process.

In connection with the Commission's request for Comments on prospective new comparative selection criteria, LCLP recommends that the Commission revisit, redefine, and reinstate the gender based preferences which were deemed unconstitutional by the U.S. Court of Appeals in *Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir 1992). The defect noted by that court can be cured in this proceeding. Moreover, reinstatement of the female preference would be consistent with the will of Congress as expressed in the Communications Act, 47 U.S.C. 309(j) and would serve important governmental objectives recognized by Congress in the communications industry, as well as in other areas. Diversification of ownership, as well as the ultimate goal of diversity of programming, can serve as a defined, important governmental objective, and is sufficient to support a gender preference in the broadcast area, as well as in other spectrum based services. Empirical data exist to support the fact that women are underrepresented in the communications industry. Promotion of gender parity in the industry, which will lead to diversity of ownership, and which may lead to diversity of viewpoints may serve as the government's goal, and warrants reinstatement of the Commission's gender preference.

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To: The Commission

COMMENTS OF LOWREY COMMUNICATIONS, LIMITED PARTNERSHIP

Lowrey Communications, Limited Partnership ("LCLP") by Counsel, hereby respectfully submits its Comments in response to the Commission's *Second Further Notice of Proposed Rule Making* in the above-captioned proceeding, and requests that the Commission consider and adopt its suggestions, as set forth below.[1]

Statement of Interest

LCLP is a competing applicant in MM Docket No. 90-342 for a new FM Station at Dalton, Georgia. That case is presently on Appeal to the U.S. Court of Appeals for the District of Columbia Circuit; however, the court has issued an *Order* to show cause why the case should not be remanded back to the Commission for further consideration in light of *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993).[2] In the event that the parties are unable to settle the case, it appears that LCLP's pending application would be subject to any new

[1]Copies of LCLP's Comments are being served on the other parties to MM Docket 90-342, as required pursuant to §1.1208 of the Commission's Rules.

[2]*Order*, Case No. 93-1690, June 17, 1994.

comparative selection process arrived at by the Commission in the instant proceeding. Accordingly, LCLP is keenly interested in the Commission's reformation of its selection criteria and any attempted application of that criteria to LCLP's pending case.

COMMENTS

1. The Commission May Not Lawfully Apply New Selection Criteria Arrived At in this Rule Making Proceeding Retroactively to any Case Decided Under the Criteria in Effect at the Time Hearings Were Held.

a. The Commission has Defined the Instant Proceeding as a Rule Making Proceeding.

In its *Second Further Notice* in the above-captioned proceeding, the Commission stated its intention to address several additional questions arising in this proceeding from the U.S. Court of Appeal's decision in *Bechtel v. FCC, supra.* Although this proceeding was for the purpose of reexamination of the Commission's *1965 Policy Statement*, this proceeding was framed as a rule making proceeding. The Commission defined this proceeding as "a non-restricted notice and comment rulemaking proceeding."[3] The Commission specifically requested formal and informal comments from interested parties.

Inter alia, the Commission requested comments regarding the procedural ramification of applying a revised comparative analysis to pending cases, and under what circumstances it would be appropriate to permit applicants in pending cases to amend their proposals in light of newly-adopted standards and when further evidentiary proceedings would be

[3]See *In Re Reexamination of the Policy Statement on Comparative Broadcast Hearings*, FCC 92-98 (Released April 10, 1992), 7 FCC Rcd 2664, at ¶ 43 ("*NPRM*").

warranted.[4]

b. Retroactive Application of New Rules is a Violation of the APA.

LCLP submits that retroactive application of any new criteria developed in this Rule Making proceeding to pending cases filed and prosecuted under the Commission's former comparative criteria would be impermissible regulation under the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq.

In *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208, 109 S. Ct. 468, 471 (1988), the Supreme Court held that an administrative agency's power to promulgate rules is limited to the authority delegated by Congress. As a general matter, statutory grants of rulemaking authority will not be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by *express* terms. ". . .congressional enactments and administrative rules will not be construed to have retroactive effect *unless their language requires this result*." (Emphasis added.) 109 S.Ct. at 471.

In Bowen, the Court agreed that there was a distinction between retroactive application of a new agency rule promulgated during an adjudication, and similar application of a new rule promulgated pursuant to agency rule making proceedings. However, retroactive application of a new adjudicative rule is permissible as to that adjudication if certain equitable principles are applicable. Retroactive application of new rules arrived at through agency rule making proceedings is not permissible, except as expressly required by statute.

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[4]*Second Further Notice*, at ¶ 8; *NPRM* at ¶ 41. In its original NPRM, the Commission requested comments only on whether such criteria should apply to pending applicants not designated for hearing. NPRM at ¶ 42(l)

There was no statutory requirement in *Bowen* that would have warranted retroactive application of new rules which were being promulgated for the first time. There, neither the agency's general rule making authority, nor its authority to take corrective measures in individual cases was deemed sufficient authority for promulgation of a new rule to be retroactively applied in all situations. The Supreme Court therefore affirmed the D.C. Circuit Court's ruling[5] that application of a new rule derived from a notice and comment rule making retroactively to deprive a regulated facility of benefits previously received was unlawful under the APA, unless otherwise justified under some express statutory provision. Such a rule could only be applied prospectively.

The Commission has cited no provision in the Communications Act for express authority to make retroactive rulings. None of the provisions cited in ¶ 45 of the initial Notice of Proposed Rule Making in this proceeding for the Commission's general rule making authority provides express authority for retroactive application of FCC Rules or policies. Thus, there is no statutory authority that would permit the Commission to apply any new rules regarding comparative selection to pending cases filed, prosecuted, and decided under the former comparative criteria. Accordingly, application of such new rules or policies retroactively would violate the APA.

c. Cases Cited by Commission in NPRM are Inapposite.

The cases cited by the Commission in the *NPRM* in support of application of new criteria to pending cases are inapposite. In *Multi-State Communications, Inc. v. FCC*, 728 F.2d 1519 (D.C. Cir. 1984), Congress had enacted a revision to the Communications Act,

[5]*Georgetown University Hospital v. Bowen*, 821 F.2d 750 (D.C. Cir. 1987).

47 U.S.C. § 331(a), which permitted the Commission's retroactive action in that case. Section 331(a) required that the Commission grant RKO a license where it volunteered for reallocation of its frequency from New York to New Jersey, which had no commercial VHF frequency allocation, notwithstanding the fact that RKO's license was pending in a renewal proceeding with Multi-State as the competing applicant for RKO's New York station. Multi-State challenged the FCC's action, *inter alia*, on grounds of improper retroactivity under the APA. However, because there was a statute which *expressly* overrode all other provisions of law,[6] the Court found the Commission's action was warranted in that case. There is no similar provision to warrant retroactive application of new rules or policies here.

d. Equitable Principles Also Preclude Retroactive Analysis of Pending Cases Past the Hearing Stage under New Criteria.

Even assuming that this proceeding may somehow be categorized as something other than a notice and comment rule making proceeding,[7] it would still be necessary to apply equitable principles mentioned in *SEC v. Chenery*, 332 U.S. 194, 203, 67 S. Ct. 1575, 1580

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[6]". . .the Commission shall, *notwithstanding any other provision of law*, order such reallocation and issue a license to such licensee . . ." 47 U.S.C. § 331(a). The Court found that this language overrode the general proscription against retroactivity, and altered the statutory scheme upon which Multi-State's *Ashbacker* rights were premised. The Court cited *FHA v. Darlington, Inc.*, 358 U.S. 84, 91 (1958) for the proposition that Congress has paramount power in the statutory field, and that an applicant's expectations cannot bar legitimate exercise of *congressional* power. However, that ruling does not apply to an applicant's expectations in the face of exercise of an agency's power, even where agency action is premised upon a court ruling.

[7]In view of the Commission's own definition of this proceeding, such a result would be difficult to justify.

(1947), and developed and applied in later cases,[8] to determine whether any new rules or policies developed to govern selection of new broadcast licensees may be applied to pending cases well past the hearing stage. Those principles may be summarized as follows: in adjudications, retroactive application of a new agency rule arrived at in the adjudication are presumptively prospective in nature, but may be applied retroactively in the particular adjudication if: (1) the issue is one of first impression; (2) the new policy is not an abrupt departure from well-established agency practice; (3) the parties have not relied on the old policy to their material detriment; and (4) the burden imposed by retroactive application of the new policy is not too great.[9]

These equitable considerations preclude wholesale application of any new selection criteria devolved in the *Bechtel* proceeding which is presently on remand for further consideration by the Commission, to other pending cases past the hearing stage. The issue raised in Bechtel was not raised in most of the proceedings decided by the Commission; although it may have been an issue of first impression in that case, the equities warrant application of any result retroactively only in that case, and not necessarily in all other pending cases, especially not in cases where the issue never arose.

The proposed new policy for a point system[10] would be an abrupt departure from

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[8]*See, e.g., Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 104 S. Ct. 2218 (1984); *see also Retail, Wholesale and Department Store Union v. NLRB*, 466 F.2d 380 (D.C. Cir. 1972).

[9]*Retail Union*, *supra*, at 390.

[10]Other systems have been proposed, including processing for basic qualifications, followed by a random selection process, and an opportunity for competing applicants to object or petition to deny the tentative selectee.

the nearly *thirty-years'* application of the criteria enumerated in the *1965 Policy Statement* especially as applied to pending applicants who organized, filed, prosecuted and litigated their applications in reliance upon the old criteria and the precedent which has developed interpreting that criteria. While the former criteria never developed into ordinary rules set forth in the Code of Federal Regulations, nevertheless, the criteria were applied consistently[11] at all Commission levels; the *1965 Policy Statement* was more than a mere guide to selection; it amounted to a specific regime of selection weights and measures, well-known and adhered to consistently by the Commission until the court's decision in *Bechtel.*

Unless the Commission permits pending applicants to extensively amend their proposals, even to the point of complete reorganization of applicant entities, pending applicants would be deprived of a fair opportunity for presentation of their case, and to challenge the cases of competing applicants. For the most part, applicants formulated their proposals and prosecuted their applications in reliance upon established agency procedures, which had never been seriously challenged.

Even assuming that the Commission provides all pending applicants with a liberal opportunity to reformulate their proposals and reassert their claims based upon new criteria, this would result in an unreasonable burden on applicants. Substantial changes in an applicant's proposal would inevitably be challenged by competing applicants; it is highly likely that in all such cases, new hearings would be required. This requirement would pose an unreasonable, and for some applicants, an unsupportable financial burden. Any applicant in any proceeding where a new hearing is required, regardless of whether that

[11]Although frequently, with inconsistent results.

applicant was the cause of the necessity for a hearing, would be deprived of the benefit of prior rulings. Moreover, this would result in an unreasonable administrative burden for the agency itself.

In short, it would be more equitable to permit applicants whose cases were decided under the former comparative criteria to proceed under that criteria, notwithstanding the Court's decision in *Bechtel*; indeed, the Commission has very little alternative, given the precedent in *Bowen*. The Commission should reaffirm its prior decisions, citing in support the Court's ruling in *Bowen* as well as applicable equitable principles that preclude any other result. Reaffirmance of prior Commission decisions in any case where the integration criterion had been relied upon by all competing applicants, and had not been directly challenged, would likely be upheld by the Circuit Court as consistent with the mandate of the APA and the rulings of the Supreme Court as well as with equitable principles, due process, and general fairness.

2. *The Commission Should Reinstate Gender Preferences in its Comparative Selection Criteria.*

With respect to new criteria to be applied prospectively to new applicants, and existing applicants who have not yet been designated for hearing, the FCC should reinstate its gender preference as part of its selection criteria.

a. Background of Gender Preferences

Originally, the Commission awarded gender preferences in comparative hearings based upon a decision by the Commission's Review Board in *Gainesville Media, Inc.*, 70 FCC 2d 153, 149 (Rev. Bd. 1978). The Commission's policy for preferences for female

ownership and participation was based upon essentially the same basis as the preference awarded for black ownership and participation, though the gender preference carried less weight. *Mid-Florida Television Corp.*, 70 FCC 2d 281, 326 (Rev. Bd. 1978), *set aside on other grounds*, 87 FCC 2d 203 (1981). However, as the Commission later admitted, there was no factual support for positing a causal link between its gender and minority preference schemes and increased diversity of viewpoints. *Steele v. FCC*, No. 84-1176 (D.C. Cir., Oct 31, 1985) (en banc).

The Commission instituted a proceeding to examine its minority and gender preference policies.[12] However Congress ordered the Commission to reinstate its existing policies in a rider to the Continuing Appropriations Act for Fiscal Year 1988.[13]

b. Unconstitutionality of Gender Preferences Based on Lack of Empirical Support for Need for Preference.

Subsequently, in *Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992), the Court declared the FCC's gender preference to be unconstitutional. However, the Court's ruling was not based upon any defect in such a preference *per se*; it was premised upon the prior lack of governmental demonstration that its gender preference policies were substantially related to an important governmental objective.

The governmental objective cited (and approved by the court) in *Lamprecht* was the

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[12]*See Reexamination of the Commission's Comparative Licensing, Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications*, 1 FCC Rcd 1315 (1986).

[13]That rider continues in effect with every annual Congressional Appropriations Act with respect to the Commission's minority policies, but was dropped for Fiscal year 1993 with respect to the Commission's gender policies, following the decision of the U.S. Court of Appeals in *Lamprecht v. FCC*, 958 F.2d 382 (D.C.Cir. 1992).

increase in diversity of viewpoints, the same goal cited in *Metro Broadcasting, Inc. v. FCC*, 110 S. Ct. 2997 (1990) as the goal which lay behind the government's minority preference, distress sale and tax certificate policies. However, it must be noted that that goal of increasing diversity of viewpoints, as cited in *Metro Broadcasting* is an ultimate goal, and was itself premised upon the prior and continuing severe underrepresentation of minorities in the communications industry. As the Court of Appeals noted in *TV 9, Inc. v. FCC*, 495 F.2d 929, 28 RR 2d 1115 (D.C. Cir. 1973), *cert. denied*, 419 U.S. 986 (1974), ". . . it is upon *ownership* that public policy places primary reliance with respect to diversification of content, and that historically has proven to be significantly influential with respect to editorial comment and the presentation of news." (emphasis added) *Id.* 28 RR 2d at 1127. Diversity of ownership, and inclusion of underrepresented groups in the industry can be expected to result in diversity of programming; it is the *likelihood* of diversity of content that is the public interest benefit sought through the Commission's minority preference schemes - not whether that benefit actually is achieved.

c. Nexus Must be Underrepresentation of Women in Industry.

Accordingly, the *Lamprecht* court's emphasis on whether it had been demonstrated that there was a causal nexus between the Commission's gender preference and actual diversity in programming was misplaced. The nexus point should and must be the underlying underrepresentation of women in the industry, not actual diversity in programming. The Commission must determine whether women are sufficiently underrepresented in the industry to warrant a non-dispositive preference as a benign means of achieving parity of representation within the industry, in order to increase the likelihood

of greater diversity of programming. Elimination of underrepresentation of women in the communications industry in general, the promotion of economic opportunity for female participation, and promoting the *likelihood* of increased program diversity may *together* be identified in this proceeding, and should serve as the reasonable, important governmental objectives warranting reinstatement of gender preferences as part of the future comparative selection process for broadcast facilities.

d. Gender-Based Preferences Must be Adopted as Constitutional.

The fact of underrepresentation in the industry was readily acknowledged by the *Lamprecht* Court, and is amply demonstrated in numerous government publications.[14]

Recognition of the fact of underrepresentation of women in the communications industry played an important role in Congressional mandates for gender preferences in non-broadcast communications services. As part of the Budget Reconciliation Act of 1993, Congress saw fit to *mandate* minority, gender and small business preferences in the allocation of spectrum to be awarded via competitive bidding, and so amended the Communications Act to memorialize the importance of including small businesses, rural telephone companies, and businesses owned by minority groups and women in its definition of "wide variety of applicants". 47 U.S.C. §309(j)(4)(D). Underrepresentation of minorities and women in the communications industry, and a preference for diverse competition *in general* were the driving factors in Congress' mandate.

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[14]*See, e.g.*, Small Business Credit and Business Opportunity Enhancement Act of 1992, Section 331 (a)(3), Pub. L. 102-366, September 4, 1992, cited in the Commission's *Fifth Report and Order, Competitive Bidding*, PP docket No. 93-253 (Released July 15, 1994), fn. 5.

The Commission considered the constitutionality of gender preferences in its Rule Making Proceedings on Implementation of Competitive Bidding; it concluded therein that substantial demonstration of historical and current underrepresentation of women in the communications industry warranted allowance of bidding credits and other preferences on the basis of gender in order to achieve the statutory goal of promoting "economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women".[15] The Commission is required by statute to ensure that businesses owned by women are given the opportunity to participate in spectrum-based services through use of tax certificates, bidding preferences, and other procedures. 47 U.S.C., § 309(j)(4)(D).

Underrepresentation of women in the industry should serve as a basis for gender preferences in comparative broadcast proceedings as well. While it may be argued that such preferences should be limited to the spectrum services allocable through competitive bidding, it cannot be denied that the factual support that served to justify constitutionality of competitive bidding preferences for women also serves to adequately justify similar preferences in other, non-auction service contexts. It would be inconsistent, and arbitrary, for the Commission to recognize the constitutionality of gender preferences in one service context, and not in another, where the factual statistics indicate that female underrepresentation is rife *throughout* the communications industry, and not just in subscriber-type service contexts. The same public interest, convenience and necessity that

[15]*See Second Report and Order, Competitive Bidding*, PP Docket No. 93-253 (Released April 20, 1994, at ¶¶ 289-297; *see also* 47 U.S.C. § 309(j)(4)(C).

mandate diversification of ownership, and minority and gender preferences in an auction context also mandate similar preferences in all contexts.

Nor would it be contrary to the Court's decision in *Lamprecht* for the Commission to reinstate gender preferences based on the record in this proceeding. Gender based preferences are constitutional where the ". . . preferential measures . . . [are] . . . supported by a convincing and comprehensive record that demonstrates that the government's methods are substantially related to the goal it hopes to achieve." *Metro Broadcasting, supra*, 497 U.S. 547, 560-563; *Lamprecht*, at 399-408. The major factor that led to the Court's decision in *Lamprecht* was the lack of sufficient factual record to support award of a gender preference. Given the information supplied with these Comments, and in connection with other proceedings, it can now be demonstrated that award of a gender preference is substantially related to the important governmental goals. The constitutional defect noted in *Lamprecht* can be cured.

e. Empirical Data Support Existing Underrepresentation of Women in the Communications Industry.

The need for economic opportunity for female-owned businesses is supported by findings and studies which demonstrate the disparity between economic opportunities available to female-owned businesses and their male counterparts. As of 1987, women-owned businesses accounted for approximately 27% of all U.S. small businesses.[16] The

[16]*The State of Small Business: A Report to the President*, page 250, attached as Ex. 1. This Report is based on 1987 data from the Business Census conducted every five years. See also additional information from the 1987 Minority Business Census attached as Ex. 2. "Facts on Working Women" from the U.S. Department of Labor is attached as Ex. 3.

Congressional Caucus for Women's Issues Report[17] reports that 32% of all small businesses were owned by women as of 1991 based on Small Business Administration data. In the communications services[18] in 1987, only 24% of small communications businesses were owned by women.[19] Of the 7,899 small communications firms owned by women, only 416, or 5.2%, are broadcast firms.[20] Thus, of the 32,536 small businesses operating in communications services in 1987, only 1.27% are broadcast businesses owned by women.[21]

Barriers to access to capital have been identified as a major stumbling block for women business owners, particularly access to credit and federal procurement.[22]

The reports and statistics strongly support the conclusion that there is a need to create opportunities for women in the communications industries. As Congress pointed out in its amendment to the Communications Act, the creation of such opportunity is an

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[17]See Ex. 4.

[18]Such services include broadcasting services.

[19]1987 Economic Census, "Women Owned Business" WB87-1, U.S. Department of Commerce, Bureau of the Census, August 1990, Tables 10 and 1, respectively, attached as Ex. 5.

[20]Communications industries and businesses for purposes of the 1987 survey are defined by census SIC codes. See Ex. 5.

[21]*Id.*

[22]*See* Ex. 4, p. 2; *see also* 1992 Annual Report to the President and Congress, National Women's Business Council, "Women Entrepreneurs in Telecommunications", Denver, March 1992, page 15, attached as Ex. 7; Summary of *1991 Annual Report to the President and Congress, National Women's Business Council*, p. 26, attached as Ex. 8.

important governmental objective, that is served through gender based preferences.[23]

3. *Conclusion*

Preferences for women in comparative broadcast proceedings will help achieve an already-identified important governmental interest, and constitute a benign measure[24] designed to achieve that goal. Such preferences are not dispositive, but will assist women in entering the broadcasting market, and in compensating for inequities in other areas, such as capital financing. The use of such preferences is not based on prohibited sex-based generalizations; rather it is based on empirical data supporting the need to create opportunities for female-owned businesses.[25] It is thus rationally related to the goal to be achieved, and is permissible under the standards set forth in *Metro Broadcasting, supra*, and recognized in *Lamprecht.* Accordingly, the preferences must be deemed to be constitutional, and not violative of the Equal Protection Clause of the Constitution.

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[23]*See also Califano v. Webster*, 430 U.S. 313, 317 (1977) (reduction in discrimination against women is an important governmental objective); *Associated General Contractors v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987) (remedying disadvantages faced by women is an important governmental interest); *Coral Construction Co. v. King County*, 941 F.2d 910, 932 (9th Cir. 1991) (legitimate and important governmental interest in remedying disadvantages faced by women business owners).

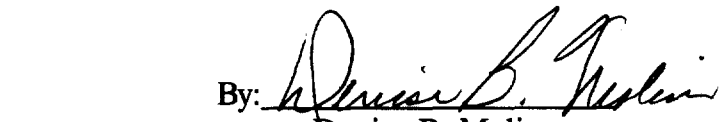
[24]Such preferences are not dispositive, and do not result in singling out female-owned entities for grants, where the preferences are part of a larger menu of factors to be considered in comparative selections.

[25]*Lamprecht v. FCC*, at 392-95.

WHEREFORE, the foregoing considered, LCLP requests that the Commission consider its suggestions and implement its recommendations in its final disposition of this proceeding.

Respectfully submitted,

LOWREY COMMUNICATIONS, LIMITED PARTNERSHIP

By: 
Denise B. Moline
Its Attorney

Denise B. Moline, P.C.
6800 Fleetwood Rd., Suite 100
P.O. Box 539
McLean, VA 22101

(703) 893-7910

July 22, 1994

EXHIBIT 1

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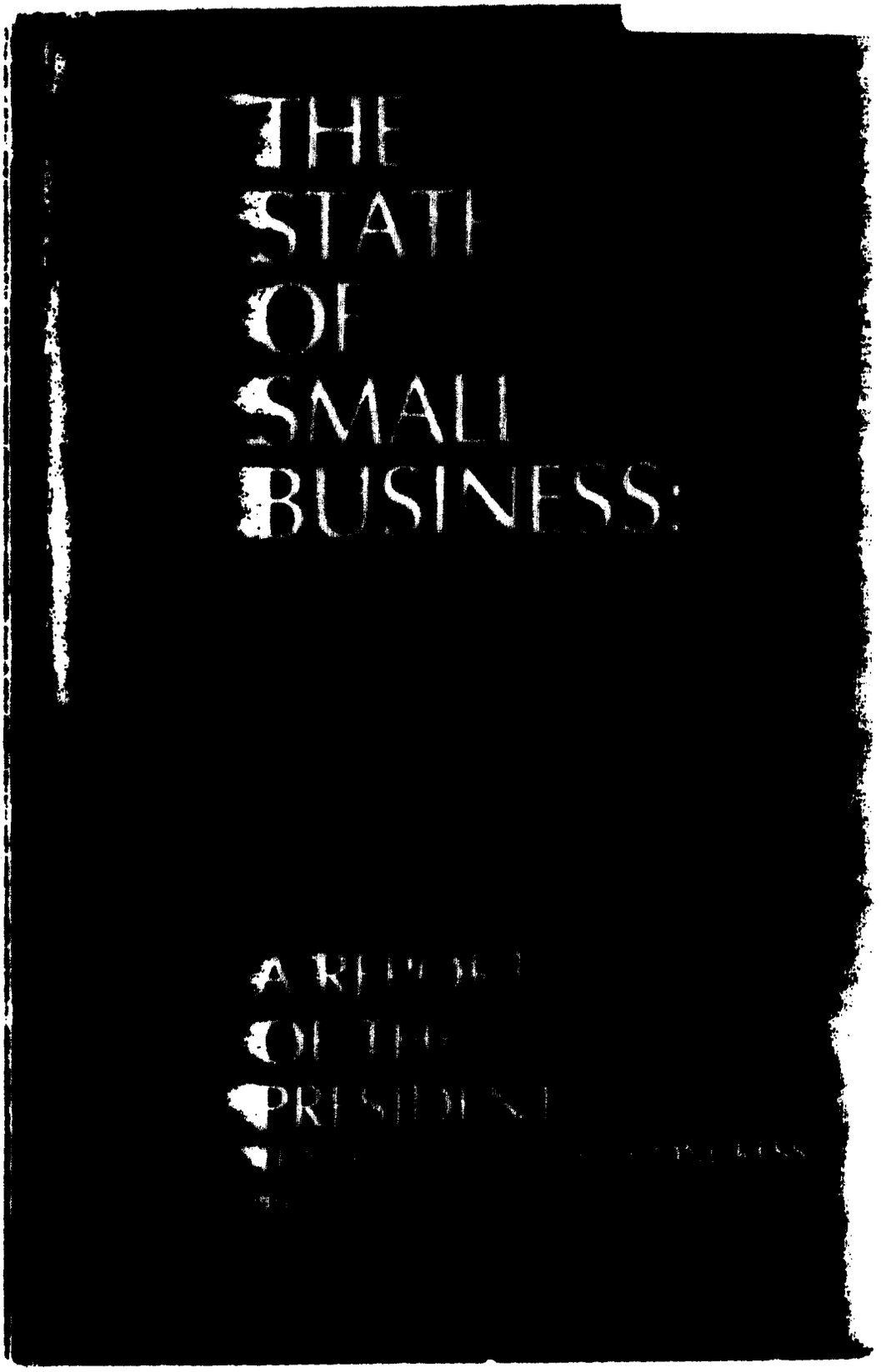


Appendix D

Women-Owned Businesses

Synopsis

The number of women-owned businesses increased by 57.4 percent between 1982 and 1987, with the receipts of these businesses rising by 81.2 percent over this same period, according to the Census Bureau's latest Survey of Women-Owned Business. The industries for which the receipts of women-owned businesses grew most rapidly between 1982 and 1987—manufacturing; transportation, communications, and public utilities; and construction—are industries in which women-owned businesses have traditionally been underrepresented. As a result, the industrial distribution of the receipts of women-owned businesses in 1987 was more diverse than it was in 1982.

The first federally produced estimates of the number and receipts of regular (1120C) corporations owned by women were created as a byproduct of a special survey undertaken by the Federal Reserve Board of Governors and the U.S. Small Business Administration. Combining these estimates with the Census data on women-owned sole proprietorships, partnerships, and Subchapter S corporations obtains crude but uniquely comprehensive estimates of the relative size of the women-owned business population in 1987. It is estimated that women owned approximately 27 percent of all U.S. businesses, and that women-owned businesses generated about 4.5 percent of total business receipts in 1987.

The Internal Revenue Service provides the SBA with annual estimates of the number and receipts of women-owned, men-owned, and jointly owned sole proprietorships. The most recent data available are for 1988, and they indicate that the formidable growth of women-owned businesses that occurred during the last decade may be slowing. Between 1987 and 1988, the number of women-owned sole proprietorships grew by 3.3 percent, the lowest yearly increase during the 1977–1988 time span for which these data are available. Whether these data reflect an inevitable slowing in the rate of increase of women-owned businesses, or an aberration in the data will not be known until statistics for later periods are available.

Introduction

The 1980s witnessed two remarkable developments in the status of women-owned businesses. First, this segment of the business population grew at a significant rate in both the number of businesses and receipts. Second, women were becoming business owners and rapidly increasing their receipts in a wider and more representative mix of industries.

This appendix examines the size and growth of the women-owned business population using data from three basic sources: (1) the Survey of Women-Owned Businesses (WOB), produced by the U.S. Bureau of the Census; (2) data obtained from a one-time survey conducted by the Federal Reserve Board of Governors and the SBA; and (3) data on women-owned, men-owned, and jointly owned sole proprietorships compiled for the SBA by the Internal Revenue Service. While none of these data sources provides a complete picture of the women-owned business population, each provides insight on some important developments in the status of women-owned businesses.[1]

The 1982 and 1987 Surveys of Women-Owned Businesses

The Census Bureau's Survey of Women-Owned Businesses is the most comprehensive source of data on women-owned businesses that are collected on a regular (quinquennial) basis. Every five years since 1972, the Census Bureau—as a special program of its Economic Censuses—releases basic statistics on women-owned businesses, as well as statistics on businesses owned by Blacks and other minorities.[2] These statistics cover women-owned sole proprietorships, partnerships, and Subchapter S corporations, but do not cover regular corporations, which are typically the largest businesses.[3] (Unless otherwise specified, the discussion presented in this appendix does not pertain to regular corporations owned by women.) Although the Census data coverage is incomplete, it is the most comprehensive of its kind.

Over the last several years, there has been much fanfare about the rapid growth of the women-owned business population, but until the October 1990 release of the 1987 Census statistics on women-owned businesses,

[1]For a discussion of the various sources of data on women-owned businesses, see U.S. Small Business Administration, Office of Advocacy, *A Status Report to Congress: Statistical Information on Women in Business* (Washington, D.C.: U.S. Small Business Administration, December 1990).

[2]The Census Bureau classifies a business as women-owned if 50 percent or more of the business' owners are women. By this classification scheme, jointly owned sole proprietorships are counted among women-owned businesses.

[3]Beginning with 1987, the Census data also exclude businesses with less than $500 in annual receipts.

the dimensions of this growth were not really known.[4] Comparing 1982 and 1987 statistics on women-owned businesses reveals a formidable increase in the number of women-owned businesses. Female business ownership has made great strides by other measures as well: between 1982 and 1987, the number of women-owned sole proprietorships, partnerships, and Subchapter S corporations rose from 2,612,621 to 4,112,787, an increase of about 58 percent. The total receipts of these businesses nearly tripled over this same period, rising from $98.3 billion in 1982 to $278.1 billion in 1987. To put these growth rates into perspective, the number of all U.S. businesses, including regular corporations, rose by only 26.2 percent, from 14.6 million in 1982 to 18.4 million in 1987, and their sales increased by 55 percent, from $6.8 trillion to $10.6 trillion.

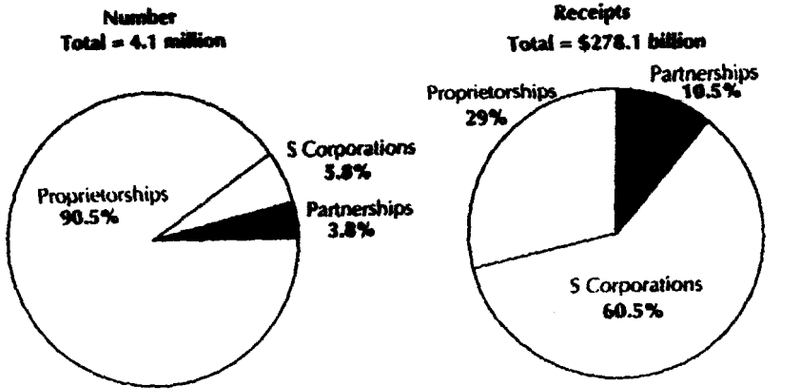
As of 1987, women-owned businesses accounted for roughly 30 percent of the number and about 13.9 percent of the receipts of all businesses within the Census universe. Most of these women-owned businesses are organized as sole proprietorships, although Subchapter S corporations account for most of the receipts of these businesses (Chart D.1, Table D.1).

Changes in Industrial Distribution

Perhaps as significant as the growth of the women-owned business population is the industrial diversification of these businesses. Traditionally, women-owned businesses have been concentrated in the retail trade and services industries. As recently as 1987, more than half (55.2 percent) of all women-owned businesses were in services (Table D.2). But this figure is somewhat misleading: while the percentage of all women-owned businesses in these industries rose between 1982 and 1987, the share of women-owned business receipts accounted for by these industries declined (Table D.2). Whereas in 1982, women-owned firms in the retail trade and services industries accounted for just over 63 percent of the total receipts of women-owned businesses, by 1987, that share had decreased to under 53 percent. One reason is the strong growth in total receipts of women-owned businesses in industries where they were traditionally

[4]A processing error in the 1977 women-owned business data rendered those data incomparable with data for other years. Thus, 1982 and 1987 are the first two consecutive time periods for which comparable statistics on women-owned businesses are available.

Distribution of the Number and Receipts of Women-Owned Businesses by Legal Form of Organization in 1987



Source: U.S. Department of Commerce, Bureau of the Census, *Women-Owned Business, 1987* (Washington, D.C.: U.S. Government Printing Office, 1990), Table 7.

more sparsely represented, namely, construction, manufacturing, and wholesale trade.

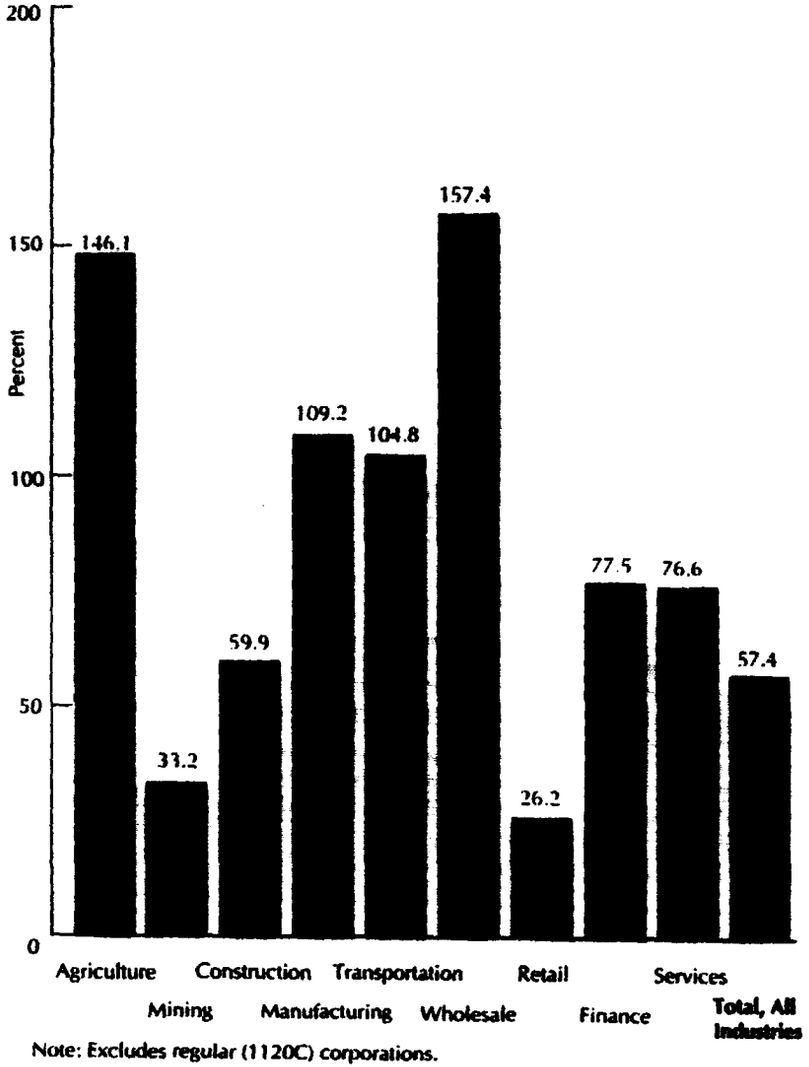
Between 1982 and 1987, the number of women-owned businesses in the construction industry rose by nearly 60 percent, and their total receipts more than quadrupled, rising from $4.6 billion in 1982 to $20.3 billion in 1987 (Charts D.2 and D.3, Table D.3).

During this same period, the number of women-owned businesses in manufacturing more than doubled, rising from 44,909 in 1982 to 93,960 in 1987. Even more striking was the change in their total receipts, up nearly sixfold, from $5.3 billion in 1982 to $30.9 billion in 1987. The manufacturing share of women-owned business receipts increased from 5.4 percent in 1982 to 11.1 percent in 1987.

The growth of women-owned businesses in wholesale trade was also strong: between 1982 and 1987, the number of women-owned firms in this industry rose from 32,059 to 82,513, an increase of 157.4 percent. Their receipts increased by more than 365 percent, from $9.2 billion in 1982 to $42.8 billion in 1987.

An indication of women's complete integration into business ownership would be an industrial cross-section of women-owned businesses that closely resembles that

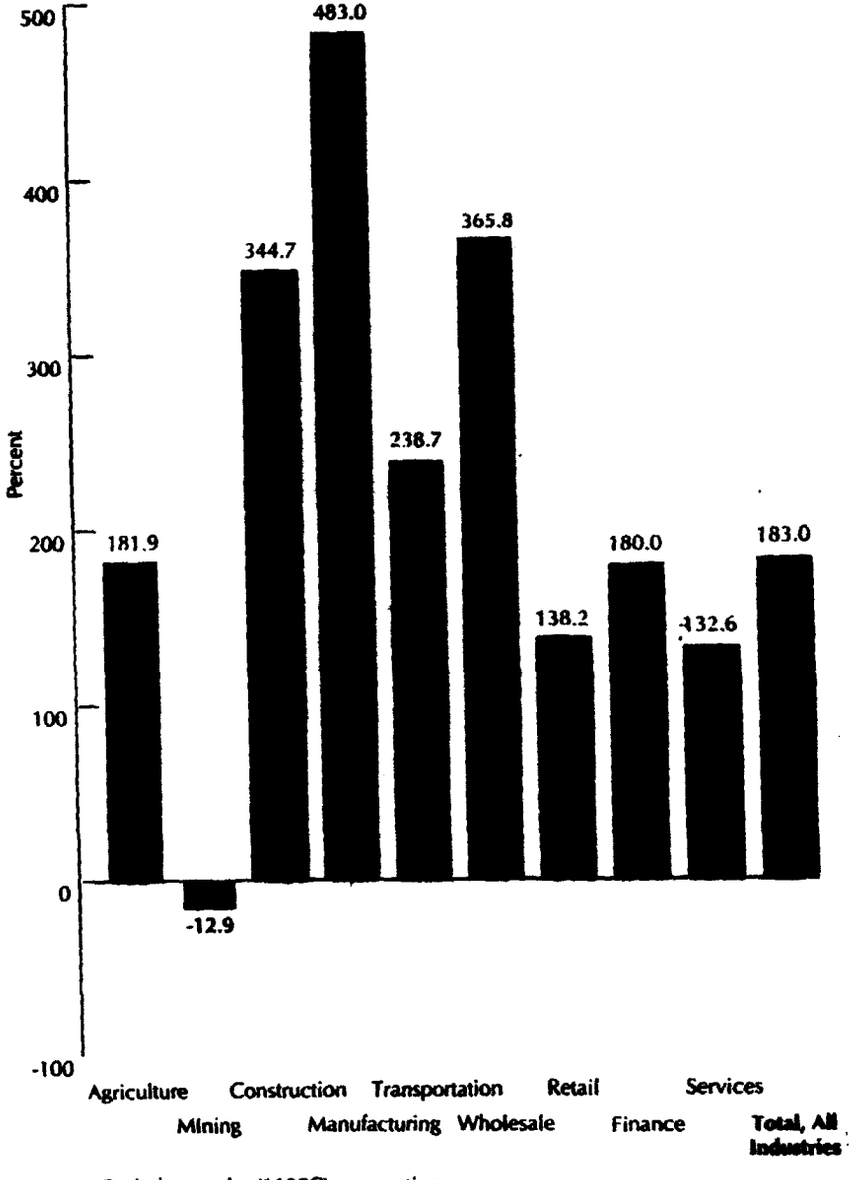
Change in the Number of Women-Owned Businesses, by Industry Division, 1982–1987



Note: Excludes regular (1120C) corporations.

Source: U.S. Department of Commerce, Bureau of the Census, *Women-Owned Businesses, 1987* (Washington, D.C.: U.S. Government Printing Office, 1990), Table 1.

Change in the Receipts of Women-Owned Businesses, by Industry Division, 1982–1987



Note: Excludes regular (1120C) corporations.

Source: U.S. Department of Commerce, Bureau of the Census, *Women-Owned Businesses, 1987* (Washington, D.C.: U.S. Government Printing Office, 1990), Table 1.